

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DELES A. PINTO,

Plaintiff,

v.

CIV NO. 1:20-cv-01095-JHR

**KILOLO KIJAKAZI,
Acting Commissioner of Social Security,**

Defendant.

ORDER

Defendant's Stipulated Motion for Fees Under the Equal Access to Justice Act (EAJA) is GRANTED.

Defendant shall pay Plaintiff a total of \$8,100.00 in attorney and paralegal fees. Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action. However, the EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).

Under *Astrue v. Ratliff*, 130 S.Ct 2521, 2528-29 (2010), EAJA fees awarded by this Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C. § 3716(c)(3)(B) (2006)). This Court therefore orders the EAJA fees to be paid to Plaintiff. If, after receiving the Court's EAJA fee order, the Commissioner (1) determines that Plaintiff has properly assigned his right to EAJA fees to his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program; and (3) agrees to waive

the requirements of the Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after offset will be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney.

IT IS SO ORDERED this 20th day of January, 2023.



JERRY H. RITTER
U.S. MAGISTRATE JUDGE